

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AVAYA INC.,

Plaintiff,

v.

RAYMOND BRADLEY PEARCE, *et al.*,

Defendants.

Case No. [19-cv-00565-SI](#)

ORDER RE: DISCOVERY

Re: Dkt. No. 121

Plaintiff Avaya Inc. and defendants Telephone Man of America LLC, Jason Hines, Dedicated Business Systems, International LLC (“DBSI”), US Voice and Data LLC, and Atlas Systems, Inc., have filed a Joint Statement of Discovery Dispute regarding plaintiff’s proposed subpoenas to non-parties eBay, Inc. and PayPal, Inc. Dkt. No. 121. The subpoenas request “all purchase/sales transaction data” related to specific eBay or PayPal user accounts connected to the moving defendants or defendant Pearce between January 1, 2009 and the present.

Defendants object that the subpoenas are overbroad because they seek information outside the three or four year statute of limitations applicable to Avaya’s claims. Telephone Man objects that the subpoenas’ definition of “Avaya Product” is vague and ambiguous because the definition requires eBay and Paypal to determine which products qualify as Avaya Products. Telephone Man also objects that the definition is overbroad as to Telephone Man because it includes hardware and software products, and Avaya has only alleged claims involving software against Telephone Man. Telephone Man and Atlas object that the subpoenas seek personal and confidential information about defendants’ customers. DBSI and Telephone Man object that the subpoenas broadly seek all “purchase/sales transaction data” and they are not limited to purchase/sales transaction data involving Avaya products; although the subpoenas define “Avaya Product,” the document requests

1 themselves do not refer to “Avaya Product.”¹

2 Avaya contends that defendants do not have standing to move to quash the subpoenas
3 because defendants cannot assert a personal right or privilege with respect to the requested sales
4 data. Avaya argues that the time period covered by the subpoenas is not overbroad because Avaya
5 believes that defendant Pearce began the copyright infringement scheme in 2009, and defendants
6 concealed the scheme from Avaya. Avaya argues that any concerns about disclosure of confidential
7 and personal information can be addressed through a protective order. Avaya argues that its
8 definition of “Avaya Product” is appropriate because, *inter alia*, “it is entirely possible . . . that the
9 Moving Defendants have sold hardware utilizing the eBay and PayPal platforms that contained the
10 stolen, Internal Use software licenses as a product ‘bundle.’” Dkt. No. 121 at 5. Avaya does not
11 respond to defendants’ contention that the subpoenas are overbroad because they are not limited to
12 seeking purchase/sales transaction data for sales of Avaya products.

13 Federal Rule of Civil Procedure 45 governs motions to quash or modify a subpoena, and
14 provides that a court must modify or quash a subpoena that, among other things, “fails to allow a
15 reasonable time to comply,” “requires disclosure of privileged or other protected matter, if no
16 exception or waiver applies,” or “subjects a person to undue burden.” Fed. R. Civ. P. 45(c)(3)(A)(i),
17 (iii), (iv). “Generally speaking, a party to an action does not have standing to move to quash a
18 subpoena served upon a nonparty unless the party claims a personal right or privilege with respect
19 to the documents requested in the subpoena.” *Glass Egg Digital Media v. Gameloft, Inc.*, No. 17-
20 CV-04165 MMC (RMI), 2019 WL 2499710, at *5 (N.D. Cal. June 17, 2019). The party moving to
21 quash a subpoena bears the burden of persuasion. *Green v. Baca*, 226 F.R.D. 624, 653 (C.D. Cal.
22 2005).

23 The Court concludes that defendants have standing to object to the proposed subpoenas
24 because the subpoenas seek transaction/sales data related to defendants’ eBay and PayPal accounts.
25 However, the Court concludes that most of defendants’ objections are unfounded for the reasons
26 stated by Avaya. The Court agrees with plaintiff that it may seek information beginning in 2009
27 because “the statute of limitations does not prohibit recovery of damages incurred more than three

28 ¹ Although the letter brief states that defendants Hines and US Voice and Data join in the
filing of the letter, the letter does not contain a separate statement by these defendants.

1 years prior to the filing of suit if the copyright plaintiff was unaware of the infringement, and that
2 lack of knowledge was reasonable under the circumstances.” *Polar Bear Prods., Inc. v. Timex*
3 *Corp.*, 384 F.3d 700, 706 (9th Cir. 2004). The Court also finds that the definition of “Avaya
4 Product” is not vague or ambiguous, and that contrary to Telephone Man’s assertions, defining
5 “Avaya Product” to include all Avaya hardware and software products will likely make it easier for
6 eBay and PayPal to respond to the subpoenas because they will not have to determine what type of
7 Avaya product is involved in a particular sale. Further, Avaya has alleged claims involving
8 hardware (telephones) in this lawsuit, albeit against a different defendant.

9 However, the Court agrees with defendants that the subpoenas are overbroad because the
10 document requests do not actually refer to “Avaya Product,” and instead seek *all* transaction/sales
11 data connected to the listed user accounts. Plaintiff is directed to narrow the requests so that they
12 are limited to transaction/sales data involving Avaya Products. Finally, the Court finds that a
13 protective order (which the parties are currently negotiating) can address defendants’ concerns about
14 the production of customers’ personal information.

15 **IT IS SO ORDERED.**

16
17 Dated: August 20, 2019



18 SUSAN ILLSTON
19 United States District Judge
20
21
22
23
24
25
26
27
28